THE EVOLUTION OF THE ENGLISH JOINT-STOCK LIMITED TRADING COMPANY.

VII.—Trading Companies Incorporated under General Act of Parliament.[1]

On September 5th, 1844, there was also passed "An Act for the Registration, Incorporation and Regulation of Joint-Stock Companies."[2] Its first section applied to every joint-stock company (as thereinafter defined) established in England or Ireland, or established in Scotland and having an office or place of business in any part of the United Kingdom,

"for any commercial purpose, or for any purpose of profit, or for the purpose of assurance or insurance (except Banking Companies, Schools, Scientific and Literary Institutions, Friendly Societies, and also Benefit Building Societies, respectively duly certified and enrolled under the statutes in force respecting such Societies, other than such Friendly Societies as grant assurances on lives to the extent hereinafter specified)."

Section 2 provided that the term "Joint-Stock Company" should "comprehend"

"every partnership whereof the capital is divided or agreed to be divided into shares, and so as to be transferable without the express consent of all the co-partners,"

Assurance Companies (as thereinafter defined) including certain insuring Friendly Societies, whether the same should

"be Joint-Stock Companies or Mutual Assurance Societies or both,"

and

"every partnership which at its formation, or by subsequent admission (except any admission subsequent on devolution or any other act in law) shall consist of more than twenty-five members."

The same section went on to provide that the Act, except where expressly applicable thereto, should not apply to (*a*) partnerships existing before the first of November, 1844, (*b*) any company for executing such works as bridges, canals, reservoirs, railways, harbors, and the like, which could not be executed without Parliamentary authority,

[1] Sections I-VI appeared in the preceding number. VIII Columbia Law Review 339.

[2] 7 & 8 Vict. c. 110.

(*c*) "Any Company incorporated or which may be hereafter incorporated by statute or charter," or (*d*) "Any Company authorized or which may be hereafter authorized by statute or letters patent to sue or be sued in the name of some officer or person."

By section 4, before even advertising the intention or proposal to form a company within the Act (whether for executing works under Parliamentary authority or not) the promoters had to file with the Registrar of Joint-Stock Companies a return of the proposed name of the company, its business or purpose, and the names, addresses and occupations of the promoters. Upon registration of these particulars the promoters were entitled to a "Certificate of Provisional Registration." But this did not incorporate the company; any joint-stock company thereinafter formed for any purpose within the Act could only act "provisionally" until it had obtained a "Certificate of Complete Registration,"[3] that is to say,[4] the promoters could assume the name of the intended company coupled with the words "Registered Provisionally"; they could open subscription lists; allot shares and receive deposits thereon; and perform such other acts as were necessary for constituting the company, or for obtaining letters patent or a charter, or an Act of Parliament. But either before or after publication of the prospectus or advertisement, as soon as the further matters were decided on, there had to be registered other particulars, such as the situation of the company's place of business, the names, etc., of the formation committee, officers and subscribers, and (before circulation) a copy of every prospectus or advertisement as to the formation of the company. The certificate of complete registration could not be obtained until the company had been "formed" by a deed of settlement which contained provisions similar to those now found in the memorandum and articles of association of a company. In the case of a company for executing a railway or other work requiring Parliamentary authority, instead of a deed of settlement, there had to be filed copies of the documents required to be deposited under the Standing Orders of the two Houses of Parliament.

By section 25, on complete registration being certified, the

"Company, and the then shareholders therein, and all the succeeding shareholders, whilst shareholders, [became] incorporated as from the date of such certificate by the name of the Company as

[3]By Section 7. [4]By Section 23.

set forth in the deed of settlement, and for the purpose of carrying on the trade or business for which the Company was formed, but only according to the provisions of this Act, and of such deed * * * and for the purpose of suing and being sued, and of taking and enjoying the property and effects of the said company * * *,"

with power (*inter alia*) to use the registered name of the Company, adding thereto "Registered"; to have a common seal; to sue and be sued in the registered name; to hold lands as a place of business, but not, without license, generally; to issue share certificates and borrow moneys. Certain restrictions were placed on companies formed to execute works requiring the authority of Parliament.

The Act contained eighty sections, many of which were such provisions as to management, auditing, etc., as are to be found practically to the same effect in the most stringent modern provisions of the existing Companies Acts.

Existing "Joint-Stock Companies" were not quite left alone, for section 58 provided that all of them to which the Act applied

"whether incorporated by Act of Parliament or by charter, or privileged by letters patent, or established by a deed of settlement. or any other instrument, or by virtue of any other authority whatever or in any other way whatever"

should, under penalties, before the first of February, 1845, register some small particulars. If they complied they were entitled *gratis* to a certificate of registration, which, however, gave them no powers or privileges under the Act; but facilities were given for complete registration of then existing companies (other than Assurance Companies). Many of them had no advantage to gain by obtaining complete registration, for the Act *did not limit the liability of members.*

By section 66 a judgment against a company completely registered

"except companies incorporated by Act of Parliament or charter, or companies the liability of members of which is restricted by virtue of any letters patent,"

could be enforced by execution not only against the assets of a company but also against the property of any shareholder who had not ceased to be such for three years. And by section 67 a shareholder who had suffered from execution had a remedy over against the company.

By the Limited Liability Act, 1855,[5] any joint-stock company thereafter formed under the 7 & 8 Vict. c. 110[6] (other than an assurance company) with a capital divided into shares of a nominal value of not less than £10 each, and any solvent joint-stock company (except as aforesaid) already registered under the Act 7 & 8 Vict. c. 110, and any solvent joint-stock company (except as aforesaid) constituted under any private Act of Parliament, was enabled to obtain a certificate of complete registration "with Limited Liability" on complying with the requirements of the Act as to registration, etc. The company had to take the word "Limited" as the last word of its name, and[7] its members were not liable under any judgment against the company, or for any of its debts or engagements, except where execution against the company failed to realize sufficient, in which case the execution might be ordered to be issued against any shareholders to the extent only of the portions of their shares not then paid up. When three-fourths of the capital of such company had been lost the directors had to take steps to dissolve and wind it up.[8]

The Joint-Stock Companies Act, 1856[9] somewhat hastily repealed the 7 & 8 Vict. c. 110,[10] and an Act slightly amending it,[11] and the Limited Liability Act, 1855,[12] but provided that the repeal should not take effect as to any company completely registered under the 7 & 8 Vict. until such company had obtained registration as thereinafter mentioned. Its 108th section provided that certain Winding-up Acts should not apply to companies registered under the Act of 1856, or under the 7 & 8 Vict. after they had been registered under the Act of 1856. Section 110 required that every company registered under 7 & 8 Vict. should, before the third of November, 1856, and that any other company duly constituted by law before the Act of 1856 and having seven or more members, might at any time thereafter, register itself as a company under the Act of 1856 either with or without limited liability, but registration with limited liability was only allowed when the company had either obtained registration under the Act of 1855,[13] or had obtained the

[5] 18 & 19 Vict. c. 133.

[6] "An Act for the Registration, Incorporation and Regulation of Joint-Stock Companies," 1844, *supra*.

[7] By sections 7 and 8. [8] By section 13.

[9] 19 & 20 Vict. c. 47 (by Section 107).

[10] *Supra*. [11] 10 & 11 Vict. c. 78. [12] 18 & 19 Vict. c. 133, *supra*.

[13] 18 & 19 Vict. c. 133, *supra*.

assent of a certain majority of its stockholders. Section 111 pointed out the requirements for registration of existing companies. Section 2 provided that the Act should not apply to persons associated together for the purpose of banking or insurance. Section 4 prohibited under penalties, after November 3d, 1856, the carrying on in partnership by more than twenty persons of any trade or business having gain for its object, unless such persons were registered under the new Act, or were authorized to trade by some private Act of Parliament, or by Royal Charter, or letters patent, or were working mines within the jurisdiction of the Stannaries.

Many of the provisions of the Act of 1856 were practically, if not exactly, the same as those of the existing Companies Act, 1862.[14] As to new companies, seven or more persons by signing a "Memorandum of Association," and complying with the requirements as to registration, were enabled[15] to form themselves into an incorporated company with or without limited liability. This memorandum had to state the name of the company, the part of the United Kingdom—England, Scotland or Ireland—in which the registered office of the company was to be; the objects of the company; whether the liability of the shareholders was to be limited or unlimited; the amount of nominal capital; and the number of shares into which the capital was divided and the amount of each share. In the case of a limited company, "Limited" had to be the last word in the name of the company. By section 8 each subscriber of the memorandum had to sign for at least one share. The memorandum was the charter or constitution of the company. It might or might not be accompanied by another document, signed by those who had signed the memorandum, called the "Articles of Association," and "prescribing regulations for the company." If there were no articles, regulations in Table B in the schedule to the Act[16] were the company's articles; these, however, could be modified or excluded altogether by articles filed with the memorandum, or subsequently adopted in the prescribed manner. But[17] articles were to be in a form set forth in Form C in the schedule "or as near thereto as circumstances will admit." The Form C provided among other things as follows:

[14]25 & 26 Vict. c. 89. *infra*, p. 469. [15]By section 3. [16]Section 9. [17]By Section 10.

"No shareholder shall transfer his shares without the consent of the directors expressed in writing. * * * If any shareholder feels aggrieved with the refusal of the directors to allow him to transfer his shares, the matter shall be settled by arbitration."

The memorandum and articles, if any, were to be filed with the Registrar of Joint-Stock Companies, who thereupon certified that the company was incorporated, and in the case of a limited company, that it was limited; and, the section[18] went on to provide.

"The subscribers of the memorandum of association, together with such other persons as may from time to time become shareholders in the company, shall thereupon be a body corporate by the name prescribed in the memorandum of association, having a perpetual succession and a common seal, with power to hold lands, but with such pecuniary liability on the part of the shareholders as is hereinafter mentioned."

Section 14 provided that the directors should be liable for debts if a dividend was paid when the company was known to be insolvent. In a note, Mr. Thring, in an early edition of his book on Companies, says:

"This section was introduced into the Bill during its progress through the House of Commons. It is copied from a New York Statute, and is inconsistent with the remainder of the Act. The language is so inaccurate that the clause will probably have no effect at all."

But this was written forty-six years ago.

Section 20 prescribed a form of transfers of shares. By section 22

"the amount of calls for the time being unpaid on any share shall be deemed a debt due from the holder of such share to the company."

Section 33 enabled a company registered under the Act to alter or make new provisions in lieu of any of its regulations—not its memorandum—whether contained in Table B or in separate articles—by a "special resolution."[19] Section 37 enabled a company, if so authorized by its regulations, to increase its capital, which was, of course, an alteration of one provision of its memorandum of association. By section 39, carrying on business beyond a certain period with less than seven members rendered the survivors personally liable for the company's debts.

[18]Section 13. [19]Defined in section 34.

Part III of the Act contained elaborate provisions for the winding-up, not only by the Court but voluntarily of all companies registered under it or under the Act 7 & 8 Vict.[20] from and after the date at which the latter had obtained registration under the Act of 1856. Section 61 provided that in winding-up the existing shareholders should be liable to contribute to an amount sufficient to pay the debts of the company and the expenses of winding-up,

"with this qualification, that if the company is limited, no contribution shall be required from any shareholder exceeding the amount, if any, unpaid on the shares held by him."

The Act, of course, contained some provisions exonerating past shareholders.

Apparently, the old companies did not come cheerfully under the Act of 1856, so by section 23 of the Joint-Stock Companies Act, 1857,[21]—section 107 of the 1856 Act[22] was itself repealed, and the three acts thereby repealed[23] were to be deemed to have been and to be still unrepealed as to any company completely registered which had not obtained registration under the 1856 Act, until it had obtained registration under the Acts of 1856 and 1857, as from which time only the revived Acts were to be deemed repealed as to such company. If default was made by not registering by that date, the company was incapable of suing of paying dividends until it did register, but the default did not make the company an illegal one.[24] Section 29 enabled but did not require companies of seven or more shareholders, with a fixed capital in shares, and duly constituted by law before the Act of 1857, to register under the Acts of 1856 and 1857, either with or without limited liability, but if without limited liability already, certain assents had to be obtained to registration with limited liability. Section 3 repealed section 4 of the 1856 Act and provided that if after July 13th, 1857, more than twenty persons carried on in partnership any trade or business having for its object the procurement of gain to the partnership, then unless such persons were (1) a company registered under the Act of 1856, (2) a company incorporated or otherwise legally constituted by or in pursuance of "some Act of Parliament, Royal Charter, or letters patent,"

or (3) engaged in working mines in the Stannaries jurisdiction,

[20] *Supra*, p. 461. [21] 20 & 21 Vict. c. 14. [22] 19 & 20 Vict. c. 47, *supra*.
[23] *Vid. supra*, p. 464. [24] By section 28.

every one of such persons should be severally liable for all the debts of the partnership. Section 5 enabled every limited company by special resolution to turn its fully paid shares into stock. Section 17 gave power to liquidators in a voluntary winding-up to sell the whole or part of the company's property to another company for shares in the latter. By section 25 when any company completely registered under the 7 & 8 Vict., had obtained registration under the Act of 1856 after November 3d, 1856, but before the passing of the Act of 1857, the registration was to be as good as if effected on or before November 3d, 1856. By section 26, section 110 of the Act of 1856 was repealed, and by the following section every company completely registered under the 7 & 8 Vict. that had been completely registered under the Act of 1855[25] (except Insurance Companies) was bound, under penalty, if not registered under the Act of 1856, to register under the 1856 and 1857 Acts on or before November 2d, 1857. Section 19 enabled the Court, instead of making a winding-up order, to make an order that a voluntary winding-up should be continued under the supervision of the Court.

The Legislature seems to have had great suspicions as to banks. By the Joint-Stock Banking Companies Act, 1857,[26] section 2 of the Act of 1856 was repealed so far as it related to persons associated together for the purpose of banking, subject to a proviso that no existing or future banking company should be registered as a limited company. A banking company of seven or more persons formed under 8 Vict. c. 113 was required to register under the new Act (with which the Joint-Stock Companies Acts of 1856 and 1857 were incorporated) on or before January 1st, 1858.[27] In case of default, besides certain named penalties, it was rendered incapable of suing or paying dividends, but was not an illegal company.[28] Banking companies of seven or more persons, having a share capital, and legally carrying on business before the passing of the Act, and not required to register, were permitted to do so under the Act, with the assent of a certain majority of the shareholders—*but not with limited liability.* On registration all provisions in any Act of Parliament, letters patent or deed of settlement constituting or regulating the company, which were inconsistent with the Joint-Stock Companies

[25] 18 & 19 Vict. c. 133, *supra.* [26] 20 & 21 Vict. c. 49.
[27] Section 4. [28] Section 5.

Acts, 1856[29] and 1857,[30] or with the new Act, were no longer to apply to the Company.[31] The 7 & 8 Vict. c. 113 and the 9 & 10 Vict. c. 75 were repealed as to any banking companies thereafter formed, and were, from the time when any company formed under them was registered under the new Act, to be repealed as to such companies, and thereafter such companies were to be regulated by a part of Table B of the Act of 1856, subject to the power of alteration given by that Act.[32] Seven or more persons associated for the purpose of banking were enabled to register themselves as a company under the Act (but not with limited liability) if the capital was divided into shares of not less than £100 each, and not more than ten persons were, after the passing of the Act, unless registered under it, to form themselves into a banking partnership, "or if so formed to carry on the business of banking."[33]

The Act 20 & 21 Vict. c. 78 contained certain provisions as to the rights of creditors of companies in winding-up or in a bankrupt state.

The Act 20 & 21 Vict. c. 80 provided that the Joint-Stock Companies Acts, 1856[34] and 1857,[35] should not be deemed to have repealed 7 & 8 Vict. c. 110[36] or any Act amending it, so far as concerned insurance companies already formed under that Act, or thereafter formed.

The Joint-Stock Companies Amendment Act, 1858[37] related almost exclusively to winding-up, enabling for that purpose certain partnerships to register under the Joint-Stock Companies Acts, 1857, or the Joint-Stock Companies Acts, 1856, 1857.[38]

By an Act of the same session[39] so much of the Joint-Stock Banking Companies Act, 1857, as prohibited a banking company from being formed under that Act with limited liability, was repealed; but where banks claimed to issue notes, they were to continue subject to unlimited liability in respect of them, and the shareholders were to be liable for the whole amount of the note issue in addition to the sum for which they would be liable as shareholders of a limited company.

And now we come to the Companies Act, 1862,[40] which in a much amended state is still the principal British Companies Act.

By its 205th section the Acts specified in the first part of the

[29] 19 & 20 Vict. c. 47, *supra*. [30] 20 & 21 Vict. c. 14, *supra*.
[31] Section 6. [32] Section 12. [33] Section 13.
[34] 19 & 20 Vict. c. 47, *supra*. [35] 20 & 21 Vict. c. 14, *supra*.
[36] *Supra*. [37] 21 & 22 Vict. c. 60. [38] Section 23.
[39] 21 & 22 Vict. c. 91. [40] 25 & 26 Vict. c. 89.

third schedule to the Act were repealed, but certain provisions of them, set out in the second part of the same schedule, were re-enacted. The repealed Acts were (among others) the 7 & 8 Vict. c. 110, already referred to,[41] the 7 & 8 Vict. c. 111, 8 & 9 Vict. c. 98, 11 & 12 Vict. c. 45, 12 & 13 Vict. c. 108, and 20 & 21 Vict. c. 78 (which were all winding-up Acts); the 7th & 8th Vict. c. 113 (as to joint-stock banks); the 10 & 11 Vict. c. 78 (as to joint-stock companies), the Joint-Stock Companies Acts of 1856[42] and 1857[43]; the Act of 1857 as to banking companies,[44] and the Act of the same session amending the Act of 1856,[45] and also the Act 21 & 22 Vict., chapters 60 and 91.

The re-enacted provisions were section 47 of 7 & 8 Vict. c. 113, as to banking companies of more than six persons within sixty-five miles of London, and not within 7 & 8 Vict. c. 113, suing and being sued, and as to enforcing judgment against them; and part of section 12 of 20 & 21 Vict. c. 49, declaring it lawful for any number of persons, not exceeding ten, to carry on banking in the same manner as six persons or more could previously have carried on the business of banking. The repeal was not to affect the incorporation of any company registered under a repealed Act, or Table B in the schedule to the Act of 1856 so far as it applied to any company existing at the time when the Act of 1862 came into force.[46] And every insurance company registered under 7 & 8 Vict. c. 110 was on or before November 2d, 1862, and every other company which was required by a repealed Act to register under the Joint-Stock Companies Acts, and which had not so registered, was obliged to register itself within a short period as a company under the Act of 1862.[47] Default in complying with these last provisions brought penalties on the directors and incapacitated the company from suing or paying dividends, but it did not make the company illegal.[48]

Part VI[49] of the Act of 1862 related to companies under "the Joint-Stock Companies Acts."[50] By its 176th section, subject as thereinafter mentioned, the new Act with the exception of Table

[41] *Supra*, p. 461. [42] 19 & 20 Vict. c. 47, *supra*.
[43] 20 & 21 Vict. c. 14, *supra*. [44] 20 & 21 Vict. c. 49, *supra*.
[45] 20 & 21 Vict. c. 14. [46] Section 206. [47] Section 209.
[48] Section 210. [49] Sections 175-178.
[50] Viz., The Joint-Stock Companies Acts, 1856 & 1857; the Joint-Stock Banking Companies Act. 1857; and the Act enabling Joint-Stock Banking Companies to register with limited liability, but not the 7 & 8 Vict. c. 110.

A was to apply to companies formed and registered under the Joint-Stock Companies Acts if those companies had been formed and registered under the Act of 1862, and the power of altering articles under that Act was extended to altering Table B. By section 177 the new Act was also to apply in the same manner to companies registered but not formed under the Joint-Stock Companies Acts as if they had been registered under the Act of 1862. By section 178 any company registered under the Joint-Stock Companies Acts might cause its shares to be transferred in a manner already in use or in such manner as the company might direct.

Part VII[51] related to existing companies authorized to registered under the new Act. By section 179 no company having its liability limited by Act of Parliament, and not being a joint-stock company[52] could register under Part VII; nor could any company so limited register under Part VII as an unlimited company limited by guarantee; nor could a company which was not a joint-stock company register under Part VII as a company limited by shares. No company could register thereunder without the assent of a majority of its members. In case a company not having liability limited by Act of Parliament or letters patent registered as a limited company, a three-fourths majority was required, and there were other requirements when a company registered itself as a company limited by guarantee. By section 180, subject as above, every existing company registered under the Joint-Stock Companies Acts, consisting of seven or more members, and every company thereafter formed in pursuance of any Act of Parliament, "other than this Act," or of letters patent, or working mines in the Stannaries, or being otherwise duly constituted by law, and having seven or more members, was enabled to register itself under the Act as an unlimited company, a company limited by shares, or a company limited by guarantee. By section 182 banking companies claiming to issue notes in the United Kingdom were not to be entitled to limited liability in respect to such issue, the members being liable therefor in addition to their liability as members. Later sections pointed out how registration under Part VII was to be obtained, and by section 196, when such registration had been obtained, all provisions of any Act of Parliament, deed of settlement, or other instrument constituting or regulating the company were to take the place of

[51]Sections 179-198. [52]As defined in section 181.

a registered memorandum and articles, and the provisions of the Act of 1862 were to apply to the company as if it had been formed under the Act, subject to certain provisions—as that Table A of 1862 was not to apply unless adopted by special resolution; that shares need not be numbered, if not previously numbered; that the company could not alter any Act of Parliament relating to it, or without leave of the Board of Trade, any letters patent; that the company could not alter any provision of the instrument constituting it, which, if the company had been formed under the Act, would have been contained in its memorandum of association, and which would not have been alterable under the Act. But this was not to derogate from any power of alteration given by the instrument constituting the company.

The Act of 1862 gave no power to a company to reduce its capital, and old companies which possessed that power lost it by registering under the Act. Future associations of more than ten persons to carry on banking were prohibited, unless registered as a company under the Act, or formed under some other Act of Parliament, or letters patent; and there was a prohibition as to future associations of more than twenty persons to carry on any other business having for its object the acquisition of gain by the association or its members, unless it was registered as a company under the Act or was formed under some other Act of Parliament or was a mining company in the Stannaries.[53] As to new companies, the old number of seven or more original members signing a memorandum of association was required.[54] The liability of members might be limited either to the amount unpaid on the shares, or to the amount they guaranteed by the memorandum in the event of the company's being wound up. The contents of the memorandum of a guarantee company differed a little from that of a company limited by shares, and that of an unlimited company differed from both. The conditions of the memorandum might be altered by increasing the capital, consolidating and dividing the shares into shares of larger amount; or converting paid-up shares into stock, or changing the company's name, but otherwise no alteration could be made in the memorandum. A company limited by shares could either register with a memorandum articles of association signed by those who signed the memorandum, or it could register without articles, in which case Table A in the

[53]Section 4. [54]Section 6.

schedule formed its regulations, or it might adopt Table A. Guarantee and unlimited companies were required to have articles which might incorporate, but need not, all or any of Table A. The articles of these companies had to state certain particulars not required in the case of a company limited by shares.[55] Incorporation was evidenced by a certificate of the fact, and thereupon the signatories of the memorandum and other persons becoming members became a body corporate,

"capable of exercising all the functions of an incorporated company having perpetual succession, and a common seal, with power to hold lands."[56]

Companies formed for the purposes of art and the like, not involving the acquisition of gain, could not hold more than two acres without the license of the Board of Trade.

Part II related to the distribution of capital and the liability of members, section 38 pointing out the liabilities of present and past members respectively in the event of winding up. It was provided that any shares might be transferred in the manner stipulated by the articles, and that the articles might be silent on this point—in which case there would be an unrestricted right of transfer—or they might place any restrictions on the right.

Part III related to management and administration, including registration of mortgages and a limited right of inspecting the register, as to holding general meetings, altering regulations, and passing resolutions, notices, etc. The Board of Trade was also given power to alter Table A.

Part IV contained numerous provisions as to the winding-up of companies, continuing the then old methods of winding-up—by the court, voluntarily, and under the supervision of the court. Sections 161 and 162 related to sales of the company's property for shares in another company, and section 165 provided a summary method of dealing with officers guilty of misfeasance.

Part V related to the registration office; and the remaining parts have been already dealt with.

One speaks of the Act of 1862 in the past tense, but most of the Act is still in force, although extensively amended.

In 1864 an Act[57] was passed which enabled companies under the Act of 1862, and carrying on business in foreign countries, to have official seals to be used in such countries.

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[55]Section 14. [56]Section 18. [57]27 & 28 Vict. c. 19.

The Companies Act, 1867,[58] made some important alterations. Its fourth section provided that when a company was in future formed as a limited company under the Act of 1862, the liability of the directors or managers or managing director should be unlimited, if it was so provided by the memorandum of association; but the writer has never assisted in forming a company where any director has allowed such a provision to be inserted. Express notice is to be given of this liability to any person proposed to be appointed a director or manager. By section 8 an existing limited company might (if so authorized by its articles), by special resolution, add a similar provision to its memorandum.

A more important alteration made by the Act of 1867 was that which enabled a company limited by shares (if so authorized by its articles), for the time being to reduce its capital[59] if such reduction was confirmed by an order of the (then) Court of Chancery.[60] Another section enabled a company (so authorized by its articles for the time being) by special resolution, to subdivide its shares into shares of a smaller amount.[61] Then section 23 enabled certain companies not formed for gain but for some useful object like art or science, by license of the Board of Trade, to register with limited liability, but without the word "Limited" as part of its name, and without the power of paying any dividends to its members. Other provisions of this Act were[62] that a share in a company was to be deemed to have been issued on the terms of being paid up in cash unless it was otherwise determined by a contract in writing filed before issue with the Registrar of Joint-Stock Companies; and that[63] prospectuses inviting persons to subscribe for shares were to be deemed fraudulent unless certain particulars as to contracts were stated therein. These two sections until repealed caused much litigation and also some hardship. Other sections of the Act defined how a company's contracts were to be entered into, and provided for the issue of share warrants to bearer, etc.

The Joint-Stock Companies Arrangement Act, 1870,[64] enabled the Court of Chancery, when a company was in liquidation (whether voluntarily or otherwise) to call meetings of its creditors with a view to compromise or arrangement, or to sanction the arrangement provisionally arrived at.

[58] 30 & 31 Vict. c. 131. [59] Section 9. [60] Section 11.
[61] Section 21. [62] Section 25. [63] Section 38.
[64] 33 & 34 Vict. c. 104.

The Life Assurance Companies Acts of 1870,[65] 1871[66] and 1872[67] imposed many obligations on incorporated and unincorporated Life Assurance Companies, especially as to deposits of substantial sums on setting up business, and making returns concerning their doings. The Acts also related to the amalgamation and transfer of their businesses, reduction of contracts and a winding-up of these companies.

Before the next Act was passed the old Court of Chancery had ceased to exist and been merged in the High Court of Justice, one division of which was and is called the Chancery Division. A much-respected judge of this division in 1877 held that where a company had lost part of its paid-up capital the court had no jurisdiction to write off the loss by reducing the nominal amount of the shares—in other words, that only uncalled capital could be reduced.[68] This decision was wrong, but everybody did not think so, and in the same year, in consequence of it, there was passed the Companies Act, 1877,[69] which provided that "capital" in the Act of 1867 included paid-up capital, and that the power to reduce capital included the power to cancel any lost capital or capital unrepresented by available assets, or to pay off any capital in excess of the wants of the company. The confirmation of the court was required, but under less stringent conditions in these cases, and a power was given to cancel unissued shares without going to the court at all.

The Companies Act of 1879[70] enabled companies registered before or after the Act as unlimited to register under the Acts, 1862 to 1879, as limited companies, and enabled companies already registered as limited to re-register under the Act of 1879. If thereupon a company increased its capital by increasing the nominal amount of its shares, the increased capital was incapable of being called up except in the event of and for the purpose of the company's being wound up, and if there was no initial increase, part of the existing uncalled capital would be on the same footing. A limited company was also enabled by special resolution to make any part of its uncalled capital uncallable except on and for winding up. The same Act repealed section 182 of the Act of 1862[71] and made a fresh enactment as to the liability of members of

[65] 33 & 34 Vict. c. 61. [66] 34 & 35 Vict. c. 58. [67] 35 & 36 Vict. c. 41.
[68] *In re* Ebbw. Vale Steel, Iron, and Coal Co. (1877) L. R. Ch. D. 827.
[69] 40 & 41 Vict. c. 26. [70] 42 & 43 Vict. c. 76.
[71] 25 & 26 Vict. c. 89, *supra.*

banks of issue registered as limited companies. The Act also provided for the audit of accounts of limited banking companies. A company authorized to register under the Act of 1879 might do so notwithstanding anything in its own Act of Parliament or other instrument of constitution.

The Companies Act of 1880 (43 Vict. c. 19) allowed a company which had accumulated a sum of undivided profits, which might with the shareholders' assent be distributed as dividend, by special resolution, and without the court's sanction, to return the same or part thereof to the shareholders in reduction of the paid-up capital, the uncalled capital being correspondingly increased and being liable to be called up in future, but any shareholder might require the company to retain the money proposed to be paid to him in respect of his shares. The same Act empowered the Registrar of joint-stock companies to strike defunct companies off the register, but gave the court the power of resurrection on the petition of the dead company or of any member aggrieved.

The Companies (Colonial Registers) Act, 1883,[72] enabled companies with share capital, and registered under the Act of 1862, to keep local registers of their members in British Colonies.

The Preferential Payments in Bankruptcy Act, 1888,[73] gave priority in winding up to certain debts, *e. g.*, parochial rates, and wages, to a certain limit, of clerks, servants, laborers and workmen.

In 1890 three important Acts were passed. The Companies (Memorandum of Association) Act[74] enabled a company registered under the Acts, 1862 to 1886, to alter the objects of the company as stated in its memorandum of association or deed of settlement, or to substitute a memorandum and articles for a deed of settlement, but the alteration had to be confirmed by an order of the Court. The Companies (Winding-Up) Act[75] placed the winding-up jurisdiction in the hands of (*a*) judges of the High Court nominated from time to time by the Lord Chancellor, (*b*) the Palatine Courts, and (*c*) when the paid-up capital was small, certain County Courts in whose districts the company was domiciled. The winding-up of companies working mines within the Stannaries was left to the Stannaries Court. The same Act constituted officers called "Official Receivers." The Official Re-

[72] 46 & 47 Vict. c. 30. [73] 51 & 52 Vict. c. 62. [74] 53 & 54 Vict. c. 62.
[75] 53 & 54 Vict. c. 63.

ceiver becomes provisional liquidator from the time when the winding-up order is made until a liquidator is appointed, and he may be continued as permanent liquidator if no other person is selected. Apart from his duties as a liquidator, the Official Receiver has independent duties under the Act; thus he is an officer of the Court and also of the Board of Trade, which has large controlling powers under the Act. This Act also gives the Court power to order the public examination of officers of the company suspected of fraudulent dealing, and makes provision for the custody and application of funds coming to the hands of liquidators. The Directors Liability Act[76] makes directors and promoters liable for misstatements in prospectuses although they are not fraudulently made. It was passed in consequence of the decision of the House of Lords in *Derry* v. *Peek*.[77]

The title of the Stannaries Court (Abolition) Act, 1896,[78] tells what this Act did; under it the winding-up jurisdiction in respect of certain companies was transferred to a Cornish County Court.

The Preferential Payments in Bankruptcy Amendment Act, 1896,[79] extended the priority of the debts mentioned in the Act of 1888,[80] as against floating charges created by debentures and debenture stock.

The Companies Act, 1898,[81] enabled the Court to grant relief where contracts had not been filed under section 25 of the Act of 1867,[82] through inadvertence and the like.

The Bodies Corporate (Joint Tenancy) Act, 1899,[83] enables a body corporate to hold any property jointly with an individual or another body corporate or both.

The Companies Act, 1900,[84] differentiates between what were then known as "private companies"—namely, those which do not invite the public to subscribe for its shares—and public companies, which do issue such invitations. As regards the latter, stringent restrictions were imposed which were not imposed on the private companies, *e. g.*, as regards the appointment of directors, the allotment of shares, the commencement of business, and the filing and contents of prospectuses, whether in respect of shares,

[76] 53 & 54 Vict. c. 64. [77] (1889) L. R. 14 App. Cas. 337.
[78] 59 & 60 Vict. c. 45. [79] 60 & 61 Vict. c. 19.
[80] 51 & 52 Vict. c. 62, *supra*. [81] 61 & 62 Vict. c. 26.
[82] 30 & 31 Vict. c. 131, *supra*. [83] 62 & 63 Vict. c. 20.
[84] 63 & 64 Vict. c. 48.

debentures, or debenture stock. But many of its provisions apply to both classes of companies, *e. g.*, as to the qualification of directors, the new early statutory meeting, the registration of floating securities, securities of any issue of debentures, and charges on uncalled capital, compulsory audit, and the reconversion of stocks into shares. The Act countenances under certain conditions the underwriting of shares of companies going to the public, and repeals sections 25 and 38 of the Act of 1867.[85] Although a contract to take shares for a consideration other than cash requires registration, the omission to register does not make the shareholder liable to pay up anything on the shares. Certain particulars of contracts and a vast deal more information has to be stated in prospectuses. The language of the Act, which was rushed through Parliament, is in many parts most obscure.

In 1906 the Board of Trade, under a power in the Act of 1862 (25 & 26 Vict. c. 60),[86] issued a new Table A for future use instead of the out-of-date Table A used for forty-four years previously.

The Companies Act, 1907,[87] is, if possible, more incomprehensible than its immediate predecessor. The only provisions of it yet in force are those which declare the validity of perpetual debentures, and provide that the redemption of one or more debentures of a *pari passu* series shall not necessarily operate so as to let the other debentures of the series close in and prevent the valid reissue of the redeemed debentures, so as to have equal rank. The rest of the Act does not come into operation until July 1st, 1908, and then there will be great changes. To the old so-called private companies, or some of them, restrictions and requirements will apply which formerly did not extend to them; for instance, the filing, before allotment of shares or debentures, of a document containing many of the particulars now required to be stated in a public company's prospectus. The Act requires companies of both classes to include in the annual filed summary a statement in the form of an audited balance-sheet, containing a summary of its capital, liability, and assets. A "private company," as defined by the Act, is exempted from these requirements. The new creature called a "private company" is one which by its articles

(*a*) "restricts the rights to transfer its shares,"

(*b*) "limits the number of its members (exclusive of persons who are in the employment of the company) to fifty."

[85] 30 & 31 Vict. c. 131, *supra*. [86] *Supra*. [87] 7 Ed. VII. c. 50.

(*c*) "prohibits any invitation to the public to subscribe for any shares or debentures of the company."

But two or more persons holding one or more shares jointly are to be treated as a "single member." Moreover, whenever in the Acts a minimum of seven persons is required, only two members are required in a case of a private company; that is to say, (*inter alia*) two or more persons may form themselves into a private company, and the dwindling of members will not be a ground for winding-up unless the number is reduced below two.

The Act of 1907 makes numerous amendments in former Acts. The provisions of the 1900 Act[88] as to the contents of a prospectus are altered without being made much clearer. Some underwriting is allowed even where the company does not issue a prospectus. Under certain restrictions payment of interest out of capital during the construction of works is allowed. The provisions of 1900 as to registering charges are slightly altered: registration is required of the appointment of a receiver and manager, and of the total amount of secured debts created before July 1st, 1908. Floating charges, not for cash, made shortly before winding-up are invalidated. A company may enforce by specific performance a contract to take its debentures. Greater powers of inspection of registers are given. The auditing clauses of the Act of 1900 are altered. Amendments are made in the law as to meetings of shareholders. Important changes are made as to winding-up: for instance, in a voluntary winding-up the liquidator has to call a meeting of creditors, to whose wishes the court may give effect, and a winding-up petition may be presented by a "contingent or prospective creditor." Restrictions are also placed on the dissolution of companies in liquidation. Moreover, companies incorporated outside, but carrying on business within the United Kingdom, are required to file with the Registrar of Joint-Stock Companies (*inter alia*) certified copies of their instrument of constitution, lists of their directors, and the name and address of some person within the jurisdiction on whom process may be served. There is also a clause enabling a company to modify the conditions of its memorandum so as to reorganize its capital, but confirmation by the Court is required; and any person or persons who trade under a name of which the last word is "Limited," and who are not incorporated with limited liability, are liable to penalties.

[88] 63 & 64 Vict. c. 48, *supra*.

It is doubtful whether these provisions will ever come into force, for all the Acts from 1862 to 1907 are shortly to be consolidated into one great Company Statute, which may be passed in time to operate on July 1st, 1908.[89]

In the meanwhile companies are turning themselves into what will be "private companies" under one Act or another on that date, and the company draftsman is flourishing.

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[89]The Bill was read for the first time in the House of Lords on April 1st, 1908.